

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 20-00004-WES
	:	
NICHOLAS LAGE	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

This matter has been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) and 18 U.S.C. § 3401(i) for proposed findings of fact concerning whether Defendant is in violation of the terms of his supervised release and, if so, to recommend a disposition of this matter. In compliance with that directive and in accordance with 18 U.S.C. § 3583(e) and Fed. R. Crim. P. 32.1, a revocation hearing was held on March 3, 2023, at which time Defendant, through counsel and personally, admitted that he was in violation of his supervised release conditions as charged. At this hearing, I ordered Defendant to self-surrender on March 10, 2023 for detention pending my Report and Recommendation and final sentencing before District Judge William E. Smith.

Based upon the following analysis and the admission of Defendant, I recommend that Defendant be committed to the Bureau of Prisons for a term of six months followed by thirty months of supervised release with special conditions.

Background

On February 14, 2023, the Probation Office petitioned the Court for the issuance of a summons. On that date, the District Court reviewed the request and ordered the issuance of a

summons. On March 3, 2023, Defendant was brought before the Court for a revocation hearing at which time he admitted to the following charges:

Violation No. 1. Mandatory Condition: Defendant must not commit another federal, state, or local crime.

On February 11, 2023, Defendant committed the offense of Domestic Violence – Simple Assault and/or Battery in Central Falls, Rhode Island. This is evidenced by a Central Falls Police Incident Report and statements made by the victim, Jennifer Andrade.

Violation No. 2. Standard Condition: Defendant must answer truthfully the questions asked by his Probation Officer.

On February 10 and 11, 2023, Defendant made false statements to Officer Dufresne.

Violation No. 3. Special Condition: Defendant is to serve the first six months in a residential reentry center, preferably the Houston House in Providence, Rhode Island.

On October 3, 2022, Defendant was terminated from the Houston House, Residential Reentry Center.

Violation No. 4. Special Condition: Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.

On January 30, 2023, Defendant failed to attend a scheduled co-occurring group at CODAC.

Violation No. 5. Special Condition: Defendant shall spend four months of supervised release on Home Incarceration with RF monitoring and will be restricted to his residence from Friday at 6:00 p.m. to Monday at 6:00 a.m., except for medical necessities, court appearances, and any other activities specifically approved by the Court.

On February 10, 2023, Defendant failed to remain at his residence on home incarceration as evidenced by an Unauthorized Leave Alert to the on-call Location Monitoring Officer, as well as Defendant's admission.

Recommended Disposition

Section 3583(e)(2), provides that if the Court finds that Defendant violated a condition of supervised release, the Court may extend the term of supervised release if less than the maximum term was previously imposed. The maximum term of supervised release was previously imposed; therefore, the term cannot be extended.

Section 3583(e)(3), provides that the Court may revoke a term of supervised release and require the Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term or supervised release without credit for time previously served on post release supervision, if the Court finds by a preponderance of evidence that the defendant has violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be sentenced to a term beyond 5 years if the instant offense was a Class A felony, 3 years for a Class B felony, 2 years for a Class C or D felony, or 1 year for a Class E felony or a misdemeanor. If a term of imprisonment was imposed as a result of a previous supervised release revocation, that term of imprisonment must be subtracted from the above-stated maximums to arrive at the current remaining statutory maximum sentence. Defendant was on supervision for a Class C felony. Therefore, he may not be required to serve more than two years' imprisonment upon revocation.

Pursuant to 18 U.S.C. § 3583(h) and § 7B1.3(g)(2), when a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized, the Court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of

imprisonment that was imposed upon revocation of supervised release. The authorized statutory maximum term of supervised release is three years. There has not been any term of imprisonment previously imposed for violations of supervised release. Therefore, the Court may impose the above-noted statutory maximum, minus the term of imprisonment that is to be imposed for this revocation.

Section 7B1.1 provides for three grades of violations (A, B, and C). Subsection (b) states that where there is more than one violation, or the violation includes more than one offense, the grade of violation is determined by the violation having the most serious grade.

Section 7B1.1(a) notes that a Grade A violation constitutes conduct which is punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device; or any other offense punishable by a term of imprisonment exceeding twenty years. Grade B violations are conduct constituting any other offense punishable by a term of imprisonment exceeding one year. Grade C violations are conduct constituting an offense punishable by a term of imprisonment of one year or less; or a violation of any other condition of supervision.

Section 7B1.3(a)(1) states that upon a finding of a Grade A or B violation, the Court shall revoke supervision. Subsection (a)(2) provides that upon a finding of a Grade C violation, the court may revoke, extend, or modify the conditions of supervision. Defendant has committed Grade C violations and the statutory maximum term of supervised release has already been imposed. Therefore, the Court may not extend supervision, but may revoke or modify supervision.

Section 7B1.3(c)(1) provides that where the minimum term of imprisonment determined under § 7B1.4 is at least one month, but not more than six months, the minimum term may be

satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e) for any portion of the minimum term. Should the Court find that Defendant has committed a Grade B or C violation, § 7B1.3(c)(2) states that where the minimum term of imprisonment determined under § 7B1.4 is more than six months but not more than ten months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in §5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment. The first provision applies to this matter.

Section 7B1.3(d) states that any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under § 7B1.4 (Term of Imprisonment), and any such unserved period of confinement or detention may be converted to an equivalent period of imprisonment. There are two months and five days of home detention and one month and eight days of weekend home incarceration outstanding. Defendant also owes \$200.00 special assessment and \$11,569.00 restitution.

Section 7B1.4(a) provides that the criminal history category is the category applicable at the time Defendant was originally sentenced. Defendant had a Criminal History Category of III at the time of sentencing.

Should the Court revoke supervised release, the Revocation Table provided for in § 7B1.4(a) provides the applicable imprisonment range. Defendant committed Grade C

violations and has a Criminal History Category of III. Therefore, the applicable range of imprisonment for this violation is five to eleven months.

Section 7B1.5(b) provides that, upon revocation of supervised release, no credit shall be given toward any term of imprisonment ordered, for time previously served on post-release supervision.

Analysis and Recommendation

Defendant's history is well known to the Court. He plead guilty to bank robbery in 2021 and received a below-guidelines sentence of thirty-six months. His sentence included the condition that he spend the first six months of supervised release at the Houston House.

Defendant commenced supervised release on September 9, 2022, and his first several months have been marked by numerous violations. He was discharged from the Houston House for rules violations, he has been repeatedly untruthful to his Probation Officer, he has violated his home incarceration condition, and, most significantly, he assaulted a family member during a domestic dispute on February 11, 2023.

Defendant has admitted these Grade C violations, and the parties have agreed to a six-month recommend sentence which I find reasonable and so recommend. I also recommend that the sentence be followed by thirty months of further supervised release with special conditions to support Defendant's transition back to the community and to provide treatment resources to address his substance abuse history and proclivity for untruthfulness and poor decision making.

Conclusion

After considering the sentencing factors set forth in 18 U.S.C. § 3553(a), I recommend that Defendant be committed to the Bureau of Prisons for a term of six months' incarceration followed by thirty months of supervision with the following special conditions:

1. Defendant shall participate in a program of substance abuse treatment (inpatient or outpatient), as directed and approved by the Probation Office.

2. Defendant shall participate in a program of substance abuse testing (up to seventy-two drug tests per year) as directed and approved by the Probation Office.

3. Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.

4. Defendant shall participate in a manualized behavioral program as directed by the Probation Office. Such program may include group sessions led by a counselor or participation in a program administered by the Probation Office. Defendant shall pay for the cost of treatment to the extent he is able as determined by the Probation Officer.

5. Defendant shall contribute to the cost of all ordered treatment and testing based on ability to pay as determined by the Probation Officer.

6. The Court makes a judicial recommendation that Defendant consider participation in the HOPE Court program

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. Fed. R. Crim. P. 59; LR Cr 57.2. Failure to file specific objections in a timely manner constitutes a waiver of the right to review by the District Court and the right to appeal the District Court's Decision. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
March 3, 2023